IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 537 OF 2006
IN
NOTICE OF MOTION NO. 2121 OF 2006
IN
SUIT NO. 49 OF 1988

M/s.Rajesh Art Printers
Private Limited & Anr. .. Appellants.

V/s.

The Official Assignee,
High Court, Bombay & Anr., .. Respondents.

Mr.Simil Purohit with Mr.Darshan Mehta i/by M/s. Dhruve Liladhar & Co. for the Appellants.

Mr.P.N.Patwardhan for Respondent No.2.

Mr.A.P.Kothari, Dy. Official Assignee -present.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 25TH AUGUST, 2006.

P.C.:

. The order dated 7th July, 2006 is challenged by the original defendants.

2. It is not in dispute that writ of summons was served upon the defendants, way back in the year, 1988 and as a matter of fact, the defendants contested the application for interim relief. However, when within a reasonable time written statement was not filed by the defendants, the matter came up for directions. On 5th of April, 1991 the defendants were granted time of eight

weeks to file written statement. They did not do so. For more than a decade and half, the written statement was not filed, but on 6th of July, 2006 a notice of motion was taken out for condonation of delay in filing the written statement and for taking the written statement on record.

3. In the affidavit in support of the notice of motion, two grounds were set out : (one) that the defendants have good case on merits and (two) that they changed Advocate in December, 2005 and that resulted in delay. None of the grounds justifies non-filing of written statement for 15 years. The appellants, as their conduct reveals, were grossly negligent in conduct of the case. For written statement, instructions from the defendants are always required by the Advocate and, therefore, for non- filing of the written statement by the earlier Advocate, blame cannot be put on him. It is the defendants who are to be blamed for not filing the written statement for long 15 years.

4. Rejection of notice of motion in the facts and circumstances by the learned motion Judge cannot be faulted.

5. Appeal is dismissed in limine.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)